

Application Serial No. 10/661,267
Response To Restriction Requirement
Attorney Docket No. 14116US01

REMARKS

This paper responds to the first Office Action in the above-entitled application, mailed on June 24, 2005, and allowing 30 days for a response. This response is timely because it is being filed within the period set for response.

Restriction Requirement

Applicants respectfully traverse the restriction requirement. "If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to distinct or independent inventions." MPEP § 803. One of the "two criteria for a proper requirement for restriction between patentably distinct inventions" is that "[t]here must be a serious burden on the examiner if restriction is not required . . ." MPEP § 803 (emphasis added). While "[f]or purposes of the initial requirement a serious burden on the examiner may be *prima facie* shown if the examiner shows by appropriate explanation either separate classification, separate status in the art, or a different field of search . . . [t]hat *prima facie* showing may be rebutted by appropriate showings or evidence by the applicant." MPEP § 803 (emphasis added).

The fields of search required to search the claimed fluid control and gas delivery assembly and the claimed method for replacing a gas source are essentially coextensive. The Examiner acknowledges that both claim groupings are in the same primary classification, 141. (June 24, 2005, Office Action at 2.) Thus, the subject matter between the restricted claims is closely related. A proper search of the method claims will require the Examiner to search for patents classified in the apparatus art, as well as the method art. Further, the elected group, identified below, includes 18 of the 21 claims in the present application. The burden to search one additional, closely related independent claim is not substantial. Moreover, the Examiner has not stated any basis for the conclusion that the method and apparatus

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have separate status in the art. Thus, the claimed subject matter has not been recognized as divergent subject matter.

For these reasons, examining both the method and apparatus claims in the same application does not present a serious burden in this instance. The restriction requirement should therefore be reconsidered and withdrawn.

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ELECTION OF CLAIMS AND SPECIES

The applicants hereby elect claims 1-18 with traverse.

CONCLUSION

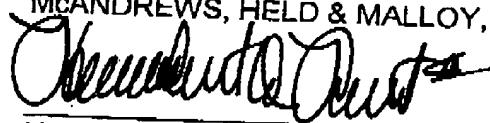
The Examiner is respectfully requested to examine all of pending claims 1-21 in this application.

If the Examiner has any questions or the Applicant can be of any assistance, the Examiner is invited to contact the undersigned attorney of record.

Though no fees are believed due, the Commissioner is authorized to charge any necessary fees or credit any overpayment to Deposit Account 13-0017.

Respectfully submitted,

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